

REMARKS

The Examiner rejected claims 1-9 under 35 U.S.C. § 102(b) as being anticipated by Montag et al. The Montag et al. reference describes an ankle joint orthosis having a joint collar 20 with an outer ankle splint 21 and an inner ankle splint 121. The two ankle splints 20 and 21 are interconnected by means of a web 22 proceeding underneath the heel of the foot (column 4, lines 60-63). At the rear, the two ankle splints 21, 121 are interconnected by means of an elastic band 23 (column 4, lines 64-68). The two ankle splints 21, 121 of the joint collar 20 are interconnected by means of at least one variable belt strap 25 or 25' (column 5, lines 9-13). A metatarsal portion 30 is formed onto the web 22 of the joint collar 20 and includes two side flaps 31, 131. The flaps 31, 131 are constructed for the connection of two cross belt straps 40, 140 and of a transverse belt strap 50 (column 5, lines 19-24). In Figs. 1-3 the straps 40 and 140 appear to be connected to the flaps 31 and 131 with a pin at 41 and 141 but this connection is not specifically described in the specification. Further, one end of the strap 50 appears to be connected to the flap 31 with a pin at 41 and it is not clear but it appears that perhaps a "D"-ring is used to connect the strap 50 to the flap 131 as shown in Fig. 2. Again, this connection is not specifically described in the specification.

Turning now to the rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Montag et al., each and every element of the claimed invention as set forth in claim 1 must be found in the Montag et al. reference *Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ 2d 1001 (Fed. Cir. 1991).

Claim 1 requires an ankle cuff strap having two ends. The Montag et al. reference does

not describe an ankle cuff strap having two ends. The Montag reference describes two ankle splints 21 and 121, the rear side of which splints are connected together with a web 23 and the front side of the splints connected with a straps 25 and 25'. No ankle cuff strap is shown and no ankle cuff strap having two ends is shown and no structure is shown for connecting the two ends of the strap together. The description of the connection of the straps 25 and 25' to the splint 121 is described in this specification at column 6, lines 3-10. As can be seen, the ends of the straps 25 and 25' are not connected together. Only one end of each strap is connected upon itself.

Claim 1 further requires a foot support strap having a medial "D"-ring attached to the support strap and a lateral "D"-ring attached to the support strap. Referring to Fig. 2 of the Montag et al. reference it appears that there may be a "D"-ring located on the flap 131, although there is no description in the specification of this "D"-ring. There is no corresponding "D"-ring located on the flap 31. Further the flaps 31 and 131 do not appear to comprise a strap as set forth in claim 1.

Claim 1 further requires a connecting strap positioned to lie over the arch of the foot in cooperation with the foot support strap to secure the lateral "D"-ring on the lateral side of the ankle and the medial "D"-ring on the medial side of the ankle. In Montag et al., element 50 appears to be a connecting strap but only one end of the connecting strap appears to be attached to a medial "D"-ring. There is no lateral "D"-ring.

Claim 1 further includes a lateral control strap which in Montag et al. may correspond to element 40. The lateral control strap 40 is not connected to a lateral "D"-ring as required by claim 1 but only to a pin at 41 as shown in Fig. 1. Further as explained above Montag et al. does not show an ankle cuff strap as set forth in claim 1 and therefore there is no structure in the

Montag et al. reference showing a connection of the lateral control strap to the ankle cuff strap.

Further, claim 1 requires a medial control strap having one end connected to a "D"-ring. Reviewing Fig. 2 of Montag et al., a medial control strap is not connected to a "D"-ring, instead straps 140 is connected with pin at 141 as shown in Fig. 2. Further, since an ankle cuff strap is not shown in Montag et al., there is no means for connecting the second end of the medial control strap to the ankle cuff strap.

A major difference of the present invention over the Montag et al. reference, which will be explained in detail later, is that the medial strap 140 and the lateral strap 40 as described in Montag et al. are not elastic. This is a major difference with claim 1.

The Examiner rejected claims 2, 3 and 4 under 35 U.S.C. § 102(b) as being anticipated by Montag et al. These three claims are dependent claims and if claim 1 is allowable, claims 2-4 should also be allowable.

The Examiner rejected claim 5 as being anticipated by the Montag et al. reference. The language of claim 5 is identical to the language of claim 1 except for the further description of the foot support strap and associated "D"-rings. As explained with respect to claim 1 Montag et al. does not show a lateral "D"-ring. With respect to the other elements of claim 5 these are discussed above with respect to claim 1.

Although significant differences were described above distinguishing the present invention over the Montag reference, it appears that the most significant difference is that the applicant's lateral and medial control straps are elastic. The importance of this difference is that this difference is directly related to the object of the present invention as set forth on page 1 of the specification namely:

"The present invention relates to an adjustable foot and ankle device which can be used to control the foot to minimize pronation, supination, toe in and toe out. With this device, the neuromuscular patterning can be changed to correct the gait of a user without resorting to orthotics," (emphasis added).

On the other hand, the Montag et al. reference is directed to an Ankle Joint Orthosis (see title) and is used to immobilize the ankle. The straps 40 and 140 are used to secure the ankle within the splints 21 and 121. (See column 3 of Montag et al., lines 48-52 and column 4, lines 15-18).

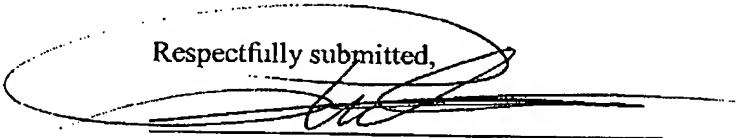
The applicant, at page 6 of the specification lines 14-25 and page 6, lines 1-5, describes how the present invention is used by adjusting the tension between the straps 60 and 62 to accomplish the desired result. There is no intent to immobilize the ankle.

In view of the differences set forth above with respect to independent claims 1 and 5 over the Montag et al. reference, it is respectfully believed that the Montag et al. reference does not anticipate the present invention. For these reasons, it is believed that the claims 1 and 5 are distinguishable over the Montag et al. reference and that claims 1 and 5 of the present application are allowable over the Montag et al. reference. The remaining claims are dependent claims and are allowable if claim 1 and claim 5 are allowable.

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